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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JILBRAUN DANDTON AGNEW,) Civil No. 11cv00757 RBB
12)
13) Petitioner,)
14)
15) v.) **ORDER DENYING PETITIONER'S**
16) **MOTION FOR APPOINTMENT OF**
17) **COUNSEL [ECF NO. 11]**
18)
19) MATTHEW CATE, et al.,)
20)
21) Respondent.)
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1 Habeas Corpus [ECF No. 12]. The parties consented to magistrate
 2 judge jurisdiction; consequently, Judge Moskowitz referred the case
 3 to this Court [ECF Nos. 9, 13].

4 This Motion for Appointment of Counsel was filed nunc pro tunc
 5 to July 26, 2011 [ECF No. 11]. In support of his request,
 6 Petitioner asserts that the issues in this action are particularly
 7 complex. (Mot. Appointment Counsel 1, ECF No. 11.) According to
 8 Agnew, the complex issues include prosecutorial misconduct, the
 9 admission of evidence that was previously deemed inadmissible, and
 10 the trial court's error in allowing the prosecutor to ask questions
 11 about other instances of Agnew's alleged misconduct. (Id.)
 12 Petitioner also maintains that due to the length of his sentence,
 13 the interests of justice require an appointed attorney. (Id.)

14 The Sixth Amendment right to counsel does not extend to
 15 federal habeas corpus actions by state prisoners. McCleskey v.
 16 Zant, 499 U.S. 467, 495 (1991); Chaney v. Lewis, 801 F.2d 1191,
 17 1196 (9th Cir. 1986); Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th
 18 Cir. 1986). Nonetheless, financially eligible habeas petitioners
 19 seeking relief pursuant to 28 U.S.C. § 2254 may obtain representa-
 20 tion whenever "the court determines that the interests of justice
 21 so require" 18 U.S.C.A. § 3006A(a)(2)(B) (West Supp.
 22 2011); Terrovona v. Kincheloe, 912 F.2d 1176, 1181-82 (9th Cir.
 23 1990); Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984); see
 24 Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). The
 25 interests of justice require an appointed lawyer when the court
 26 conducts an evidentiary hearing on the petition. Rule 8(c), 28
 27 U.S.C. foll. § 2254; Terrovona, 912 F.2d at 1181; Knaubert, 791
 28 F.2d at 728; see Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir.

1 1994). Otherwise, whether to appoint an attorney is entirely
2 within the discretion of the district court. Knaubert, 791 F.2d at
3 728.

4 "Indigent state prisoners applying for habeas relief are not
5 entitled to appointed counsel unless the circumstances of a
6 particular case indicate that appointed counsel is necessary to
7 prevent due process violations." Chaney, 801 F.2d at 1196; see
8 Knaubert, 791 F.2d at 728-29. A due process violation may occur if
9 the issues involved are too complex for the petitioner to handle
10 without the assistance of an attorney. In addition, the
11 appointment of counsel may be necessary if the petitioner has
12 limited education and is incapable of presenting the claims in the
13 petition. Hawkins v. Bennett, 423 F.2d 948, 950 (8th Cir. 1970).
14 "[A] district court should consider the legal complexity of the
15 case, the factual complexity of the case, the petitioner's ability
16 to investigate and present his claim, and any other relevant
17 factors." Abdullah, 18 F.3d at 573.

18 Because these factors are useful in determining whether due
19 process requires court-appointed counsel, they are considered to
20 the extent possible based on the record before this Court. Agnew
21 argues, "Counsel should be appointed because the issues in this
22 case are particularly complex." (Mot. Appointment Counsel 1, ECF
23 No. 11.) He continues, "The issues include: Prosecutor
24 misconduct, admitting inadmissible evidence that was ruled during
25 [in] limine motion[,] court error allowing the prosecutor to infect
26 trial with uncharged misconduct." (Id.) Despite this contention,
27 Agnew has sufficiently represented himself to date. The Petitioner
28 has prepared and filed a sixteen-page Petition for Writ of Habeas

1 Corpus with thirty-three pages of exhibits [ECF No. 1], a motion to
2 proceed in forma pauperis [ECF No. 2], and this Motion for
3 Appointment of counsel [ECF No. 11]. Agnew filed these documents
4 within a period that spanned less than four months, and there is no
5 indication that anyone other than Petitioner drafted them. He has
6 adequately represented himself. Agnew's Petition was pleaded
7 sufficiently for this Court to direct Respondent to file an answer
8 or other responsive pleading to the Petition [ECF No. 4].

9 From the face of the Petition, it appears that Petitioner has
10 a good understanding of this case and the legal issues involved.
11 (See Pet. 6-9, ECF No. 1.) The Petition contains a recitation of
12 relevant facts as well as legal arguments with citations to case
13 law and other supporting authority. (See id.) Based on the detail
14 and clarity of the Petition, Agnew has competently presented his
15 claims. He has not pointed to any particular circumstances that
16 would make the appointment of counsel necessary at this time. See
17 Bashor, 730 F.2d at 1234 (denying request for appointed counsel
18 where petitioner thoroughly presented the issues in his petition
19 and memorandum of law). Moreover, "[t]he procedures employed by
20 the federal courts are highly protective of a pro se petitioner's
21 rights. The district court is required to construe a pro se
22 petition more liberally than it would construe a petition drafted
23 by counsel." Knaubert, 791 F.2d at 729; see Bashor, 730 F.2d at
24 1234. At this stage of the proceedings, the interests of justice
25 do not require that Agnew receive attorney representation.

26 "Where the issues involved can be properly resolved on the
27 basis of the state court record, a district court does not abuse
28 its discretion in denying a request for court-appointed counsel."

1 Hoggard, 29 F.3d at 471; McCann v. Armontrout, 973 F.2d 655, 661
2 (8th Cir. 1992); Travis v. Lockhart, 787 F.2d 409, 411 (9th Cir.
3 1986) (per curiam). Here, Agnew alleges that the prosecutor
4 committed prejudicial misconduct during the jury trial by asking
5 witnesses questions about whether Petitioner had punched a woman in
6 an unrelated incident, which was evidence that the trial judge had
7 previously ruled was inadmissible. (Pet. 6-9, ECF No. 1.) The
8 Petitioner also asserts that the trial court erred in allowing the
9 prosecutor to ask witnesses questions about Agnew's other alleged
10 misconduct. (Id. at 6.) The Court has been provided with all
11 relevant documents and transcripts to properly resolve the
12 allegations in the Petition on the basis of the record. (See
13 Answer Attach. #1 Notice Lodgment 1-2, ECF No. 12); Hoggard, 29
14 F.3d at 471; McCann, 973 F.2d at 661; Travis, 787 F.2d at 411.

15 Additionally, Agnew maintains that the interests of justice
16 require appointed representation "[d]ue to the length of
17 Petitioner's sentence," which is thirty-eight years to life. (Mot.
18 Appointment Counsel 1, ECF No. 11; see Pet. 1, ECF No. 1.) "A
19 habeas petitioner's interest in release from illegal confinement
20 undoubtedly is high. However, . . . due process does not require
21 appointment of counsel when an evidentiary hearing is not held."
22 Knaubert, 791 F.2d at 729. Further, in habeas corpus actions,
23 counsel is typically only appointed in (1) capital cases, (2) cases
24 that turn on complex procedural or mixed legal and factual issues,
25 (3) actions litigated by petitioners who are mentally or physically
26 impaired, (4) matters that will likely require experts, (5) actions
27 involving petitioners who are unable to investigate crucial facts,
28 and (6) factually complex cases. Salango v. Sisto, No. CIV S-09-

1 0044-TJB, 2011 U.S. Dist. LEXIS 13071, at *7-8 (E.D. Cal. Feb. 7,
2 2011). Thus, Agnew's prison term of thirty-eight years to life is
3 not central to whether appointed counsel is necessary to prevent
4 due process violations. See id.; see also Chaney, 801 F.2d at
5 1196.

6 Indeed, the assistance that counsel provides a petitioner is
7 valuable. "An attorney may narrow the issues and elicit relevant
8 information from his or her client. An attorney may highlight the
9 record and present to the court a reasoned analysis of the
10 controlling law." Knaubert, 791 F.2d at 729. Even so, "[u]nless
11 an evidentiary hearing is held, an attorney's skill in developing
12 and presenting new evidence is largely superfluous; the district
13 court is entitled to rely on the state court record alone." Id.
14 (citing Sumner v. Mata, 449 U.S. 539, 545-57 (1981); 28 U.S.C.
15 § 2254(d)). If a court denies a petitioner's request for
16 appointment of counsel, the court will draw an independent legal
17 conclusion after informing itself of the relevant law. Id.
18 "Therefore, the additional assistance provided by attorneys, while
19 significant, is not compelling." Id.

20 When a pro se petitioner presents a claim that the state
21 court made an unreasonable determination of the facts, the court
22 may exercise its discretion to hold an evidentiary hearing. Id. at
23 n.6. In that circumstance, counsel must be appointed to a
24 petitioner who qualifies under 18 U.S.C. § 3006A(a)(2)(B). Id.;
25 see Rule 8(c), 28 U.S.C.A. foll. § 2254; Wood v. Wainwright, 597
26 F.2d 1054 (5th Cir. 1979). The Court may also appoint counsel for
27 the effective utilization of any discovery process. Rule 6(a), 28
28 U.S.C.A. foll. § 2254. An evidentiary hearing has not been ordered

1 in this case, and at this time, it does not appear that discovery
2 will be necessary.

3 For the reasons stated above, the interests of justice do not
4 compel the appointment of counsel to represent Agnew at this stage
5 of the case. Petitioner's Motion for Appointment of Counsel is
6 **DENIED** without prejudice.

7 **IT IS SO ORDERED.**

8
9 DATED: August 10, 2011


Ruben B. Brooks
United States Magistrate Judge

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11 cc: All parties
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